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Jeffrey J. Corradino
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June 5, 2015

VIA E-FILE & EMAIL (Steven.Davis@NLRB.gov)
Honorable Steven Davis
Administrative Law Judge
National Labor Relations Board
120 West 45th Street – 11th Floor
New York, NY 10036-5503

Re: Meadowlands Hospital Medical Center
Case No.: 22-CA-086823, *et al*

Dear Judge Davis:

Attached is Respondent's Motion to Adjourn the Trial and certificate of service. Both Counsel for the General Counsel and the Union have informed us that they do not object to the request to adjourn.

Respectfully submitted,

JACKSON LEWIS P.C.

Jeffrey J. Corradino

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
BEFORE ADMINISTRATIVE LAW JUDGE STEVEN DAVIS

MHA, LLC d/b/a MEADOWLANDS HOSPITAL MEDICAL CENTER, Respondent, and HEALTH PROFESSIONAL AND ALLIED EMPLOYEES, AFT/AFL-CIO Union.	Case Nos. 22-CA-086823 22-CA-089716 22-CA-090437 22-CA-091025 22-CA-091521 22-CA-092061 22-CA-096650 22-CA-097214 22-CA-099492 22-CA-100324 22-CA-106694

RESPONDENT'S MOTION TO ADJOURN THE TRIAL

Respondent MHA, LLC d/b/a Meadowlands Hospital Medical Center ("Respondent") submits this motion to adjorn the hearing dates currently scheduled for June 18; 22-26 and 30 and July 1-2, 2015 until an appropriate time after the National Labor Relations Board issues a decision on the Health Professionals and Allied Employees', AFT/AFL-CIO ("Union") Request for Special Permission to Appeal Your Honor's May 15, 2015 Order and the Union produces the subpoenaed information if the Board so orders.

The Union and Counsel for the General Counsel do not object to an adjournment of the trail.

I. RELEVANT PROCEDURAL BACKGROUND

On October 21, 2013, Respondent, through counsel, served a Subpoena on the Union, seeking documents regarding the Union's pattern of conduct which Respondent contends violated the no-strike clause which is contained in each of the three collective bargaining agreements between Respondent and the Union. Specifically, document request number 33 of Respondent's Subpoena sought:

> 33. All documents relating to communications to any employees, agents or representatives of the Union, any third-party or from any third-party including media outlets; state and local governments and subdivisions; regulatory agencies; labor organizations; representatives and agents and other third parties and their agents which mention or discuss or in any way relate to Meadowlands Hospital Medical Center from September 2010 to the present.

On December 4, 2013, Your Honor issued an Order, granting the Union's Petition to Revoke Paragraph 33 as it pertained to Respondent's Affirmative Defenses 121 and 122. On December 24, 2013, Respondent filed a Request for Special Permission to Appeal the revocation of Subpoena request number 33.[1] Thereafter, on December 26, 2013, Respondent amended its Answer, asserting the following Affirmative Defense:

> 111. The Union has engaged in conduct that amounts to a material breach of the no-strike provisions of the collective bargaining agreements set forth in paragraph 20 of the Amended Consolidated Complaint therefore suspending Respondent's duty to bargain at all relevant times.

On February 25, 2014, the Board issued an Order, upholding Your Honor's December 4, 2013 Order.

On February 27, 2014, in light of the Board's finding that Respondent's defense at issue was essentially legal in nature, Your Honor issued an "Order Reversing Prior Order

[1] Respondent did not appeal the striking of Affirmative Defenses 121 and 122.

Revoking Subpoena" and held: "Respondent must be given an opportunity to prove its defense that the Union's communications amounted to a breach of the no-strike clause, thereby permitting it to refuse to bargain with the Union."

On March 12, 2014, the Union filed a motion for reconsideration as well as a Motion to Strike Respondent's Affirmative Defense 111. On March 13, 2014, Your Honor orally denied the motions, finding "the defense that Respondent raised is a legal defense."[2] On the record, Respondent agreed to identify the information and documents sought more precisely in writing to the Union. In compliance with the discussion on the record, Respondent forwarded two letters to the Union on March 18 and 19, 2014. Subsequently, on April 2, 2014 the Union filed a Request for Special Permission to Appeal Your Honor's Order Reversing Prior Order Revoking Subpoena.

On the record on April 3, Respondent expressed that not having documents in response to subpoena paragraph 33 presented logistical problems in terms of putting on a case in support of its affirmative defense.

Your Honor stated: "Well, we are just going to wait until we hear from the Board on that, then."[3] In subsequent discussions Respondent, Counsel for the General Counsel and the Union agreed to adjourn the trail to await the Board's ruling on the Union's Request. Following the hearing on April 10, 2015, Your Honor adjourned the hearing pending the outcome of the Union's Request.

On March 24, 2015, the Board denied the Union's Request as to the Petition to Strike Affirmative Defense 111, thereby affirming the "legal" viability of Respondent's defense. The Board also denied the Union's Request as it related to Your Honor's denial of the Petition to

[2] March 13, 2014, Tr., at 2216:3-9.
[3] April 3, 2014, Tr. at 2377:21-25.

Revoke paragraph 33 of Subpoena B-71-509. However, the Board noted that the "propriety of subpoena paragraph 33, as modified by the Respondent is not properly before the Board."

On May 11, 2015, Your Honor ordered that the trial resume on June 18, 2015 at the NLRB Newark Regional Office, to continue on June 22 through June 26, and on June 30, July 1 and 2.[4]

On May 15, 2015, Your Honor issued an Order substantially enforcing Respondent's Subpoena Paragraph 33 as clarified by the March 18 and 19, 2014 letters.[5] On May 18, 2015, Respondent sent correspondence to the Union concerning its anticipation of compliance with Your Honor's May 15, 2015 Order. The Union did not respond. Additional efforts to obtain an estimated date for production were unsuccessful. However, on June 4, 2015, the Union confirmed that it intends to file a Request for Special Permission to Appeal Your Honor's May 15, 2015 Order.

Based on the foregoing, Respondent seeks an adjournment of the trial in this matter until an appropriate time after the Board rules on the Union's request and, if applicable, after the Union produces the subpoenaed information.

II. THE TRIAL IN THIS MATTER SHOULD BE ADJOURNED UNTIL AN APPROPRIATE TIME AFTER THE BOARD RULES ON THE UNION'S REQUEST FOR SPECIAL PERMISSION TO APPEAL

As set forth above, after the Union Files its original Request for Special Permission to Appeal Your Honor's decision, all Parties agreed to an adjournment. ***The circumstances that originally necessitated the adjournment of the trial continue to be present.***

[4] Exhibit A.
[5] Exhibit B. Your Honor limited the period of time for production of documents to January 1, 2011 to December 31, 2013, and ordered the redaction of names of former and current employees.

Going forward at this juncture would force Respondent to engage in piecemeal litigation with the certainty of having to recall witnesses after they have testified about subjects unrelated to Respondent's affirmative defense. Further, the information revealed in the anticipated production of documents likely will result in the necessity to subpoena additional witnesses in Respondent's case-in-chief. Similarly, Counsel for the General Counsel likely may be compelled to commence his rebuttal case with the prospect of later recalling witnesses who have previously testified.

Such piecemeal litigation is contrary to the goal of ensuring an efficient and orderly trial presentation for all parties which should avoid "repeated recall of witnesses and relitigation of issues, at considerable inconvenience to the witnesses and expenses to their businesses and livelihoods." *Lewis Foods of 42nd Street, LLC*, 02-CA-093893, et al. at p. 3 (May 19, 2015) (ALJ Esposito). For example, in an analogous situation, the Board discussed the likely prejudicial effect caused by a party's non-compliance with a subpoena at the outset of a hearing. *McAllister Towing & Transp. Co.*, 341 NLRB 394, (2004). Specifically, the Board explained that the "Respondent's failure to timely produce subpoenaed documents could have meant that the General Counsel would have been forced to recall previously examined witnesses, as well, which would have further disrupted and prolonged the hearing." *Id.* at 398. The Board's reasoning sustained the Administrative Law Judge's finding that "[h]ad counsels for the General Counsel in these circumstances accepted piecemeal production of the subpoenaed documents, it conceivably could have meant that after inspection of the documents, they would have been forced to recall the witnesses previously presented in order to testify about issues raised by the documents. This would have substantially disordered and prolonged the presentation of testimony." *Id* at 417 (ALJ Kern). The *McAllister* rationale

applies here as both Respondent and Counsel for the general Counsel may find themselves in the same unjustifiable situation.

III. CONCLUSION

For the foregoing reasons, the proper administration and presentation of this case requires an adjournment until such time as the Parties can go forward with a reasonable degree of certainty and efficiency. Therefore, Respondent respectfully requests this matter be adjourned until an appropriate time after the Board rules on the Union's Request for Special Permission to Appeal is adjudicated and after the Union produces the subpoenaed information if so ordered by the Board.

Respectfully submitted,

MEADOWLANDS HOSPITAL MEDICAL CENTER

Dated: June 5, 2015

By: _____

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EXHIBIT A

BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

MHA, LLC d/b/a MEADOWLANDS HOSPITAL MEDICAL CENTER	**Cases 22-CA-086823**
	22-CA-089716
	22-CA-090437
and	**22-CA-091025**
	22-CA-091521
	22-CA-092061
	22-CA-096650
HEALTH PROFESSIONAL AND ALLIED EMPLOYEES, AFT/AFL-CIO	**22-CA-097214**
	22-CA-099492
	22-CA-100324
	22-CA-106694

ORDER RESUMING HEARING

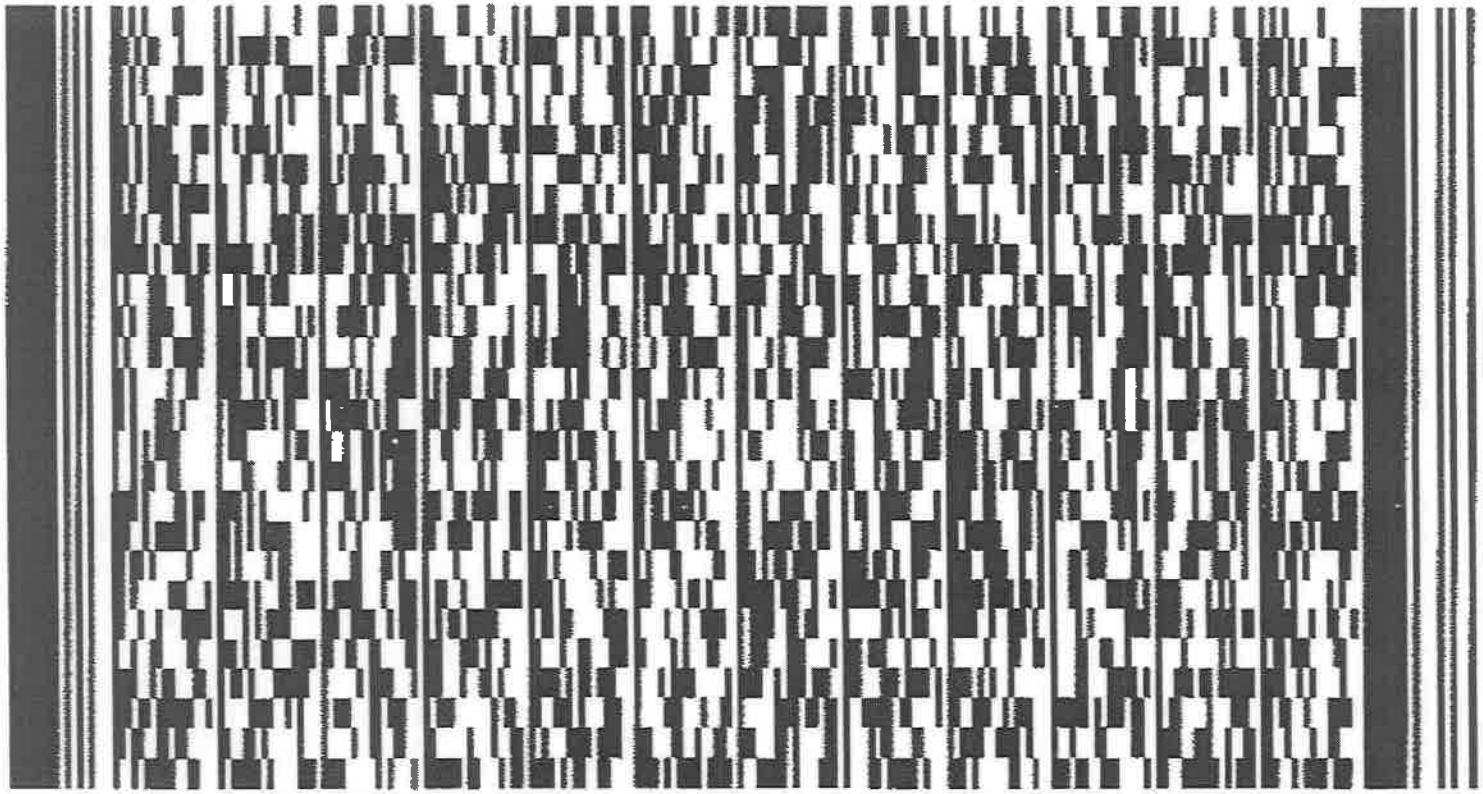
WHEREAS, on April 10, 2014, the hearing in the above case was adjourned; and

WHEREAS, on the consent of all parties IT IS HEREBY ORDERED THAT the hearing will resume on June 18, 2015 at 9:30 a.m. at the NLRB Newark Regional Office; and the hearing will continue on June 22 through June 26, and on June 30, July 1 and 2.

Dated: May 11, 2015
New York, NY

Steven Davis
Administrative Law Judge

National Labor Relations Board



Case Number:	22-CA-086823	Title:	JDO.22-CA-086823.ALJ Davis 5.11.15
Document Type:	JDO	Document Subtype:	Administrative Law Judges Order
Participant Type:	NLRB - ALJ	Action:	ALJ
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Submitter:	Alba, Delby	Notes:	

EXHIBIT B

BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

MHA, LLC d/b/a MEADOWLANDS HOSPITAL MEDICAL CENTER	**Cases 22-CA-086823**
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HEALTH PROFESSIONAL AND ALLIED EMPLOYEES, AFT/AFL-CIO	**22-CA-097214**
	22-CA-099492
	22-CA-100324
	22-CA-106694

ORDER ON RESPONDENT'S LETTERS OF MARCH 18 AND 19, 2014

Background

This matter involves the Union's Petition to Revoke paragraph 33 of the Respondent's subpoena B-710509. The subpoena demands the following documents in order to prove that the Union breached the parties' contract by violating its no-strike clause which prohibits engaging in "economic pressure activity":

> All documents relating to communications to any employees, agents or representatives of the Union, any third party or from any third party including media outlets; state and local governments and subdivisions; regulatory agencies; labor organizations; representatives and agents and other third parties and their agents which mention or discuss or in any way relate to Meadowlands Medical Center from September, 2010 to the present.

On December 4, 2013, I granted the Petition on the ground that the documents sought were irrelevant to this proceeding. On February 25, 2014, the Board (Member Miscimarra dissenting), denied the Respondent's Request for Special Permission to Appeal, stating that I did not abuse my discretion in granting the Petition to Revoke paragraph 33 of the Respondent's subpoena. The Board noted that there was no dispute that the Union engaged in such communications, and that the Respondent's defense is essentially a legal defense.

On February 27, 2014, sua sponte, I reconsidered my prior Ruling and reversed it, denying the Union's petition to revoke paragraph 33 of the subpoena. I held that the Respondent must be given an opportunity to prove its defense that the Union's communications amounted to a breach of the no-strike clause, thereby permitting it to refuse to bargain with the Union. I accordingly held that the documents demanded in paragraph 33 are relevant to that defense and must be produced.

Thereafter, at a hearing on March 13, 2014, I commented that the subpoena was extraordinarily broad and directed that the Respondent narrow the subpoena to those documents which directly relate to its defense.

On March 18 and 19, 2014, the Respondent issued letters which it asserts narrowed the documents sought in the subpoena.

On March 24, 2015, the Board denied the Union's Request for Special Permission to Appeal my February 27, 2014 ruling. The Board noted that the record did not demonstrate that I had ruled on the Respondent's modifications to its subpoena in its letters of March 18 and 19. The Board stated that, at that time, the propriety of the subpoena, as modified by the Respondent, was not properly before the Board.

Thereafter, the Union submitted a position statement and the Respondent submitted a response concerning the Respondent's letters of March 18 and 19.

Ruling on the Respondent's Letters of March 18 and 19

The Respondent's letters specify eight paragraphs in which documents are sought. They seek documents which show that the Union engaged in "economic pressure activity" by the following:

(1) Engaging in a media campaign against the Respondent.
(2) Engaging community organizations in a campaign against the Respondent.
(3) Engaging in public demonstrations and communications against the Respondent.
(4) Encouraging the Respondent's employees to refrain from using healthcare services provided by the Respondent and encouraging them to discourage members of the public from using such services.
(5) Encouraging the Respondent's employees to refrain from referring individuals to it for employment.
(6) Applying economic pressure on the Respondent through the filing of complaints with public agencies and causing such agencies to investigate the Respondent without cause or evidence of regulatory deficiencies or violations.
(7) Attempting to influence or sway public officials against the Respondent, and
(8) Other instances of applying economic pressure activity against the Respondent.

The letters specify that such documents between the Union and the various entities which may have been in communication with the Union should be produced. The documents sought are those which mention or relate to the Respondent as they concern the Union's alleged economic pressure activity in the eight categories set forth above.

I hold that the Respondent's letters sufficiently and properly narrow the scope of the subpoena. The subpoena, as modified, seeks identifiable documents which are relevant to the Respondent's proof of its affirmative defense that by engaging in economic pressure activity, prohibited by the parties' no-strike clause, the Union breached its contract with the Respondent.

The documents sought, subject to the limitation as to employee names, below, are well within the scope of relevance for subpoenaed documents. Thus, the documents "relate to [a] matter under investigation or in question in the proceedings..." Board's Rules & Regulations, Section 102.31(b).

The Union's Objections

The Union asserts that the eight categories set forth above should be limited to those evidencing the Union's "intent to cause economic harm" to the Respondent. It further asserts that, on its initial review of the documents, no documents reflect its intent to cause economic harm to the Respondent.

Although I stated at the hearing that documents which should be produced include those which show the Union's planned actions, the intent of the activities, the intent to be accomplished and the infliction of economic harm, on review of the specific contract language which prohibits the use of "economic pressure activity," I hold that the only documents which must be produced are those described above in the eight paragraphs set forth in the Respondent's letters.

Evidence of the Union's planned actions in leading up to that activity, the Union's intent in engaging in such activity or the infliction of economic harm, are all outside the purview of this subpoena issue.

The Union also objects to the time period for the documents sought in the subpoena, from September, 2010 to the present. The Union requests that the period be limited to the time period in the complaint. The complaint was issued on September 30, 2013. The Respondent began its operations in December, 2010, and the first alleged unfair labor practices are alleged to have occurred in February, 2012. In its Request for Special Permission to Appeal Order Revoking Subpoena, dated December 24, 2013, the Respondent lists nine instances of alleged economic pressure activity, from January, 2011 through 2013.

Inasmuch as the Board noted that there is no dispute that the Union engaged in such communications, and the Union in its position statement concedes that it "publicized the Hospital's financial practices and the harm that the Employer has inflicted upon employees; and the Union petitioned governmental bodies like the NLRB to address these problems," there is no necessity for the extended period of time sought by the Respondent.

Accordingly, the period of time for the production of the documents is limited to January 1, 2011 to December 31, 2013.

I reject the Union's assertion that it should not have to produce documents "outside of the public domain." Communications between the Union and other entities which establish "economic pressure activity" are relevant regardless of whether they are public documents.

The Union claims that documents "received by the Union" should not be produced because it is not responsible for the statements of others. The issue is whether the Union engaged in "economic pressure activity." Communications received from others is relevant as to whether the Union engaged in such activity must be produced.

The Union objects to the disclosure of documents which set forth the names of its members or former members, citing *National Telephone Directory*, 319 NLRB 420 (1995), on the ground that such disclosure would identify employees who communicated with the Union, thereby violating their right of confidentiality in engaging in union activity.

In *National Telephone Directory*, the Board applied a balancing test in which it "balanced the employer's need for the information against the employees' rights, under Section 7 of the Act, to keep their union activities confidential." *Guess?, Inc.*, 339 NLRB 432, 433-434 (2003). *National Telephone Directory* involved the employer's attempt to determine who signed

authorization cards during a union organizing campaign, and who attended union meetings. In contrast, no union organizing drive or authorization cards are at issue here.

In *Guess?, Inc.*, above, the Board held that asking an employee in a workers' compensation deposition who was present at union meetings was unlawful. The Board noted that the employees' confidentiality interests "may not be the same as they would be during an organizing campaign. Nevertheless, the confidentiality interests are still substantial here." 339 NLRB at 434-435.

I apply the balancing test here. In this case, employees' confidentiality interests in their engaging in union activities are substantial. Accordingly, I will direct the Union to redact the names of current or former employees in all of the documents provided to the Respondent.

The Union requests that I issue a protective order "forbidding the disclosure of [documents produced] to the general public and nonparties, and limiting them solely to the use of counsel during the hearing, and not to be publicly disclosed."

Good cause must be shown for the issuance of a protective order. FRCP 26(c). The Union has not offered any reason for the issuance of a protective order. Its request is denied.

Conclusion

All the documents set forth in paragraph 33 of the subpoena, as modified by the Respondent's letters of March 18 and 19, 2014, and as limited with respect to employee names, as set forth above, must be provided to the Respondent.

Dated: New York, NY
May 15, 2015

Steven Davis
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ADMINISTRATIVE LAW JUDGE STEVEN DAVIS

MHA, LLC d/b/a/
MEADOWLANDS HOSPITAL MEDICAL CENTER

Case Nos. 22-CA-086823
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22-CA-106694

HEALTH PROFESSIONAL AND ALLIED EMPLOYEES,
AFT/AFL-CIO

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Adjourn the Trial was served via electronic mail, on this 5th day of June, 2015 to the following:

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Arlene Gabriel

4839-3372-8292, v. 1
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